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NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

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HON HAI PRECISION INDUSTRY CO., LTD.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

C07 06217PVT

HON HAI PRECISION INDUSTRY CO., LTD.

CASE NO.

Plaintiff,

COMPLAINT

v.

DEMAND FOR JURY TRIAL

MACROVISION CORPORATION and
MACROVISION LICENSING & HOLDING
B.V.

Defendants.

1 Plaintiff Hon Hai Precision Industry Co., Ltd. ("Hon Hai") brings this Complaint
2 against Defendants Macrovision Corporation and Macrovision Licensing & Holding B.V. and
3 alleges as follows:

4 **THE PARTIES**

5 1. Plaintiff Hon Hai is a Taiwanese corporation having its principal place of business
6 at 2 Tzu Yu Street, Tu-Cheng City, Taipei Hsien 236 Taiwan, R.O.C.

7 2. On information and belief, Defendant Macrovision Corporation is a Delaware
8 corporation having its principal place of business at 2830 De La Cruz Boulevard, Santa Clara,
9 California, and its subsidiary Defendant Macrovision Licensing & Holding B.V. ("Macrovision
10 B.V.") is a Netherlands corporation with its principal office at Locatellikade 1, Parnassustoren,
11 1076 AZ Amsterdam, the Netherlands. On information and belief, both defendants have been
12 acting jointly, in concert, and as agents and conspirators of one another in the acts described herein
13 and are collectively referred to as "Macrovision" in this Complaint.

14 **JURISDICTION**

15 3. This Court has subject matter jurisdiction over this diversity action pursuant to 28
16 U.S.C. § 1332.

17 4. Venue is proper in this district, pursuant to 28 U.S.C. §§ 1391 (a), (b) and (c),
18 because: Macrovision Corporation resides in this judicial district; a substantial part of the actions,
19 statements, and threats giving rise to Hon Hai's claims took place in this judicial district;
20 Macrovision is subject to personal jurisdiction in this judicial district; and Macrovision B.V. has
21 contractually agreed to jurisdiction in the state and federal courts of Santa Clara County.

22 **INTRA-DISTRICT ASSIGNMENT**

23 5. This cause of action arises in Santa Clara County, where a substantial part of the
24 events giving rise to the claims took place, and because Macrovision B.V. has contractually agreed
25 to jurisdiction in the state and federal courts of Santa Clara County in this matter. Accordingly, and
26 pursuant to Civil L.R. 3-2 and 3-5, this action should be assigned to the San Jose Division.

FACTUAL BACKGROUND

6. Plaintiff Hon Hai manufactures numerous types of electronic products, including DVD playing products, which include personal computers, graphic cards, and DVD players (hereinafter "DVD products"). Hon Hai also manufactures set-top boxes, which descramble television programs received from broadcasters. Hon Hai also acts as an original equipment manufacturer of DVD products and set-top boxes for large electronics companies, and manufactures its own branded products under the Foxconn label, including computer chassis, motherboards, and graphic cards.

7. Macrovision purportedly owns patented analog copy protection ("ACP") technology that allows consumers to view DVDs and digital programming, but prevents consumers from copying these programs using VCRs. The Digital Millennium Copyright Act ("DMCA"), passed in October 1998, effectively requires suppliers and manufacturers in the VCR and DVD industry to take a license from Macrovision for its ACP technology. *See* 17 U.S.C. § 1201(k) (the so-called "Macrovision provision").

8. Hon Hai and Macrovision have a valid, enforceable, and existing contract (the "DVD Agreement") licensing Hon Hai to use Macrovision's ACP technology for DVD products in return for specified and adequate consideration. Hon Hai and Macrovision also have a valid, enforceable, and existing contract (the "Set-Top Box Agreement") licensing Hon Hai to use Macrovision's ACP technology for set-top boxes in return for specified and adequate consideration. The specific terms of the DVD Agreement and Set-Top Box Agreement are confidential and are, therefore, alluded to only indirectly and generally in this Complaint.

9. On May 29, 2007, Macrovision sent a letter alleging that Hon Hai had materially breached the DVD Agreement, and purporting to terminate the DVD Agreement. On information and belief, Macrovision then promptly notified other licensees and authorized suppliers that Hon Hai was supposedly no longer an authorized licensee and threatened, either directly or indirectly, that Macrovision might attempt to terminate the licenses of licensees who did business with Hon Hai. Macrovision also removed Hon Hai from its list of licensed DVD product manufacturers on Macrovision's website.

1 10. Contrary to Macrovision's insistence that Hon Hai breached the DVD Agreement,
2 Hon Hai has fully complied with the terms of the DVD Agreement, as will be demonstrated once
3 an appropriate Protective Order has been entered to permit Hon Hai to reveal (under seal) the terms
4 of the DVD Agreement and Hon Hai's compliance with the DVD Agreement. To date, Hon Hai
5 remains an authorized ACP-capable IC buyer under the DVD Agreement and has acted consistently
6 with the terms of the valid and enforceable Agreement.

7 11. In contrast, Macrovision has breached several terms of the DVD Agreement through
8 its purported termination of the DVD Agreement without cause and other violations of the terms of
9 the Agreement. Macrovision demanded more than the DVD Agreement requires, and when Hon
10 Hai did not immediately meet Macrovision's overly broad and unreasonable demands, Macrovision
11 purported to terminate the DVD Agreement without following the termination procedure required
12 in the DVD Agreement. Macrovision has also not followed the alternative dispute resolution
13 requirements of the DVD Agreement, despite Hon Hai's requests and written demand that
14 Macrovision do so.

15 12. Following Macrovision's actions and, on information and belief, its threat, implied
16 or explicit, that Macrovision would similarly attempt to terminate the licenses of Hon Hai's
17 suppliers and customers if they continued to do business with Hon Hai, companies notified Hon
18 Hai that they would not do business with Hon Hai unless the dispute with Macrovision is
19 resolved. Indeed, one IC chip supplier temporarily suspended sales to Hon Hai, stating that its
20 reason for doing so was that Hon Hai was no longer listed on Macrovision's website as ACP
21 licensed. Macrovision improperly removed Hon Hai from its list, knowing that companies
22 involved in the ACP industry routinely confirm whether a customer has a license to Macrovision's
23 ACP technology before they will ship products to the customer.

24 13. Hon Hai is a leading worldwide supplier of DVD products. Last year, this segment
25 of Hon Hai's business produced billions of dollars in revenue. Without its licenses to
26 Macrovision's ACP technology, Hon Hai would face difficulty in obtaining IC chips from its
27 suppliers and its ability to manufacture and supply DVD products with analog outputs to customers
28 would be impacted. Thus, by improperly purporting to terminate the DVD Agreement with Hon

1 Hai, by falsely telling others in the industry that Hon Hai is not licensed under the DVD
2 Agreement, by improperly removing Hon Hai from Macrovision's list of licensees, and by refusing
3 to engage in contractually required alternative dispute resolution, Macrovision's breach of the DVD
4 Agreement has already damaged Hon Hai and will inevitably cause Hon Hai to suffer additional
5 losses.

6 14. In October 2007, and after previously improperly removing Hon Hai from the list of
7 DVD product licensees on Macrovision's website, Macrovision also improperly removed Hon Hai
8 from its list of licensed manufacturers of set-top boxes. Macrovision did so even though it
9 subsequently acknowledged to Hon Hai and, on information and belief, to one of Hon Hai's IC chip
10 suppliers, that Hon Hai remains licensed under the Set-Top Box Agreement.

11 15. As stated below, Hon Hai requests that the Court order Macrovision (1) to cease
12 treating Hon Hai as a non-licensee and cease taking actions that are inconsistent with Hon Hai
13 being a licensee, (2) to cease telling others that Hon Hai is not licensed under the DVD Agreement,
14 (3) to return Hon Hai to the list of ACP licensees on Macrovision's website; and (4) to in no way
15 threaten or penalize other companies for doing business with Hon Hai.

16 **FIRST CLAIM FOR RELIEF**

17 **(Breach of the DVD Agreement)**

18 16. Hon Hai incorporates by reference each of the allegations of paragraphs 1 through
19 15 above as if set forth herein.

20 17. Hon Hai's DVD Agreement with Macrovision is a valid and enforceable contract
21 supported by adequate consideration, and is sufficiently certain to award specific performance.
22 Hon Hai has duly performed its obligations under this agreement. Macrovision has breached this
23 contract by its acts described above, causing damage to Hon Hai.

24 **SECOND CLAIM FOR RELIEF**

25 **(Breach of the Covenant of Good Faith and Fair Dealing)**

26 18. Hon Hai incorporates by reference each of the allegations of paragraphs 1 through
27 17 above as if set forth herein.

28 19. In addition to breaching the valid and enforceable DVD Agreement as alleged in

Count One, Macrovision also breached the covenant of good faith and fair dealing by, among other things, removing Hon Hai from the list of licensed companies identified on Macrovision's website and by interfering with its licensee Hon Hai's relationships with suppliers and customers. The conditions in the agreement requiring Macrovision's performance have occurred, and Macrovision has unfairly interfered with Hon Hai's right to receive the benefits of that agreement.

THIRD CLAIM FOR RELIEF

(Specific Performance of the DVD Agreement by Macrovision)

20. Hon Hai incorporates by reference each of the allegations of paragraphs 1 through 19 above as if set forth herein.

21. Hon Hai and Macrovision have a valid contract, the DVD Agreement, which has sufficiently certain terms and can be specifically enforced. The terms of the DVD Agreement justly and reasonably provide Hon Hai a license to Macrovision's technology, and were obtained through adequate consideration, among other things.

22. Hon Hai has fully complied with the terms of the DVD Agreement, and has issued a written demand to Macrovision that it engage in the alternative dispute resolution mechanism required by the agreement.

23. As described above, Macrovision has breached the DVD Agreement in multiple ways.

24. Legal remedies are insufficient to prevent the harm to Hon Hai that has and will result from Macrovision's breach of the DVD Agreement. Hon Hai will continue to have its reputation tarnished as long as this dispute continues, particularly given Macrovision's concerted actions to make the industry incorrectly believe that Hon Hai is no longer a licensee of Macrovision's ACP technology. Moreover, Hon Hai will suffer additional losses and irreparable harm if Hon Hai cannot purchase or sell ACP-enabled products and the suppliers and customers affected by Macrovision's concerted actions turn to seek other sources. The threat of losing business relationships is not only real, it is imminent, given that companies previously told Hon Hai that they would cease their business relationship if the dispute with Macrovision is not resolved,

1 and one IC chip supplier temporarily blocked shipments to Hon Hai. If the suppliers and customers
2 affected by Macrovision's concerted actions establish relationships with other companies, it may be
3 impossible for Hon Hai to regain them, and they may be lost forever. Even if Hon Hai does
4 manage to win back customers, the full amount of damages would be impossible to calculate.

5 25. Accordingly, Hon Hai requests that the Court order Macrovision to specifically
6 perform its obligations under the DVD Agreement, in particular, to cease treating Hon Hai as a
7 non-licensee, to cease taking actions that are inconsistent with Hon Hai being a licensee, and to
8 abide by the alternative dispute resolution provisions in the DVD Agreement. Such an order would
9 allow Hon Hai to continue to purchase ACP-enabled IC chips and to sell products to its existing
10 customers, as are its rights under the DVD Agreement, and would help alleviate further business
11 harm to Hon Hai until the issue is resolved in alternative dispute resolution as required by the DVD
12 Agreement.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Hon Hai prays for relief and judgment as follows:

15 1. Preliminary and permanent injunctive relief and an order for specific
16 performance to return the status quo, i.e., the circumstances prior to Macrovision's purported
17 termination of the license, as well as an order that Macrovision (1) cease treating Hon Hai as a non-
18 licensee and cease taking actions that are inconsistent with Hon Hai being a licensee, (2) cease
19 telling others that Hon Hai is not licensed under the DVD Agreement, (3) return Hon Hai to the list
20 of ACP licensees on Macrovision's website, and (4) in no way threaten or penalize other companies
21 for doing business with Hon Hai;

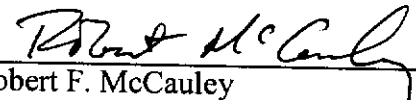
22 2. Further preliminary and permanent injunctive relief and specific performance
23 by ordering Macrovision to fulfill its obligations under the DVD Agreement, including participating
24 in the agreed-upon alternative dispute resolution process;

25 3. For reasonable attorneys' fees and costs; and

26 4. For such other and further legal and equitable relief as the Court deems just
27 and appropriate.
28

1 Dated: December 7, 2007

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

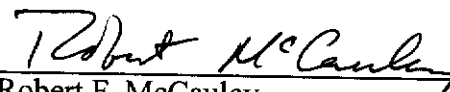
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3
4 By: 
5 Robert F. McCauley
6 Attorneys for Plaintiff
7 Hon Hai Precision Industry Co., Ltd.

8 **JURY DEMAND**

9 Plaintiff demands a jury trial on all matters triable by jury.

10 Dated: December 7, 2007

11 FINNEGAN, HENDERSON, FARABOW,
12 GARRETT & DUNNER, L.L.P.

13
14 By: 
15 Robert F. McCauley
16 Attorneys for Plaintiff
17 Hon Hai Precision Industry Co., Ltd.